International Longshoremen's and Warehousemen's Union Local 62-B *and* Alaska Timber Corporation. Cases 19-CC-1319 and 19-CD-385

30 August 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 23 September 1983 Administrative Law Judge Richard J. Boyce issued the attached decision. The Respondent filed exceptions and a supporting brief, the Charging Party filed cross-exceptions and a brief in support thereof, and the Respondent filed a brief in opposition to the Charging Party's cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] only to the extent consistent with this Decision and Order.

The judge found that Longshoremen ILWU Local 62-B (the Respondent or the Union) violated Section 8(b)(4)(i) and (ii)(D) of the Act by picketing the Charging Party, Alaska Timber Corporation (ATC). On this issue we agree with his findings, analysis,[3] and conclusion, and adopt those portions of his decision.

The judge also found, relying on *Oil Workers (Anchortank, Inc.)*, 238 NLRB 290 (1978), enfd. 601 F.2d 233 (5th Cir. 1979), that the Respondent's picketing did not violate Section 8(b)(4)(B) of the Act, and dismissed that portion of the complaint. The Charging Party has excepted to the judge's conclusion that *Anchortank*, above, is not significantly distinguishable from the present case. We agree with the Charging Party and hold that the Respondent's picketing violated Section 8(b)(4)(B) of the Act.

The employer in *Anchortank* operated a chemical storage facility on the Gulf of Mexico. Abutting the facility was a public dock used by the employer to load chemical cargo for oceangoing vessels. The respondent union in *Anchortank* had participated in a representation campaign at the employer's storage facility and was awaiting[4] Board certification of the election results. Prior to the issuance of any certification, the union struck the facility alleging unfair labor practices. The union placed pickets on land around the dock and the storage facility. The union also picketed the dock from the water in a small boat. The General Counsel alleged that by these pickets the union sought to enmesh neutral parties[5] servicing the employer in the union's primary unfair labor practice dispute with the employer. The Board held, relying on *Electrical Workers IUE Local 761 (General Electric) v. NLRB*, 366 U.S. 667 (1961), and *Steelworkers (Carrier Corp.) v. NLRB*, 376 U.S. 492 (1964), that the union was entitled to enmesh the vessels and pilots in connection with its primary picketing of the employer.

The facts herein are set out more fully in the underlying 10(k) determination[6] and in the attached judge's decision. ATC processes and sells heavy timber to its customers. The timber is picked up at ATC's private dock by boats owned or chartered by the customers. Before January 1981 ATC sold the lumber on an F.A.S. basis.[7] Under that ar-

[1] The Respondent excepts to the judge's finding that its official Browne testified in the 10(k) proceeding that he remembered talking to the Charging Party's president, Head, about bringing crews to Klawock from other parts of Alaska. We dismiss this exception in light of the Respondent's stipulated waiver herein of the right to file exceptions to the judge's findings of fact. In any event, we also affirm the judge's finding as clearly supported by the record. The Respondent also excepts to the judge's conclusion that Head's testimony was "of a believability" satisfying the burden of proof herein. Again, in light of the Respondent's stipulated waiver we dismiss this exception insofar as it challenges the judge's finding of fact as to Head's credibility. Even absent the waiver we find no basis for reversing the finding of fact. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). This second exception may also be construed as challenging the judge's conclusion of law that Head's testimony satisfies the General Counsel's evidentiary burden as to the alleged 8(b)(4)(i) and (ii)(D) violation. We have considered the exception construed in this manner in light of the briefs and record and we affirm the judge's conclusion.

[2] The Respondent excepts to the judge's failure to consider its work preservation defense to the 8(b)(4)(i) and (ii)(D) violation found herein. It is well settled that issues raised and fully litigated in a 10(k) proceeding cannot, absent new and previously unavailable evidence, be relitigated in the subsequent 8(b)(4)(D) proceeding. *Iron Workers Local 433 (Plaza Glass)*, 218 NLRB 848, 849 (1975), enfd. 549 F.2d 634 (9th Cir. 1977). The Respondent has made no showing herein of any new and previously unavailable evidence. It is clear from the underlying 10(k) determination, *Longshoremen ILWU Local 62-B (Alaska Timber)*, 261 NLRB 1076 (1982), that the work preservation defense was vigorously litigated therein. Accordingly, we find that the Respondent is precluded from relitigating its work preservation defense in the instant proceeding and we dismiss the exception.

[3] The judge's findings, analysis, and conclusion are sufficient to establish a violation of Sec. 8(b)(4)(D). In our view, however, the record contains an additional basis for finding that the Respondent violated Sec. 8(b)(4)(D). The parties stipulated and we find that on 2 June 1982 the compliance officer for Region 19 requested notification from the Respondent of compliance with the Board's underlying 10(k) determination. The parties further stipulated and, in agreement with the judge, we find that the Respondent did not respond to this request. The Board has held with court approval that failing and refusing to notify the Regional Director of intent to comply with a 10(k) determination, standing alone, violates Sec. 8(b)(4)(D) of the Act. *Plumbers Local 195 (Texas Oil)*, 231 NLRB 525 (1977), enfd. 574 F.2d 1215 (5th Cir. 1978); *Operating Engineers Local 571 (J.E.D. Construction)*, 241 NLRB 1066 (1979), enfd. 624 F.2d 846 (8th Cir. 1980). Accordingly, we find that the Respondent's failure to reply to the Region's compliance request herein constitutes an additional and independent ground for the judge's conclusion that the Respondent violated the Act.

[4] Objections to preelection conduct were pending before the Board.

[5] E.g., shipowners, shipping agents, and pilots.

[6] *Longshoremen ILWU Local 62-B (Alaska Timber)*, above.

[7] Under an F.A.S. (free alongside) arrangement ATC is responsible for delivering the timber to the dock. The customer is then responsible for

Continued

rangement ATC's customers usually engaged Southeast Stevedoring Company (SES) to handle loading the lumber from the dock into the ships. In turn, SES engaged longshoremen represented by the Respondent to actually load the lumber into the ships' holds.

In January 1981 ATC changed its sales procedures and began offering its lumber on an F.O.B. basis.[8] ATC chose to fulfill its delivery obligation under the F.O.B. basis by using its own production employees to load the lumber into the ships. Accordingly, the first customer to negotiate a lumber purchase in 1981, Yuasa Trading Corp., did not engage SES to handle the loading. When the Respondent discovered that ATC's unrepresented employees and not its longshoremen members would be loading the customer's lumber, the Respondent commenced the picketing that later became the basis for the unfair labor practice complaint. This picketing took place at two land entrances to ATC's facility and around the boat chartered by Yuasa Trading Corp.

When considering an 8(b)(4)(B) allegation, the Board is mindful of "the dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." *NLRB v. Denver Building Trades Council*, 341 U.S. 675, 692 (1951). The issue in 8(b)(4)(B) cases is whether the union's conduct was primary or secondary activity. It is well settled that "this issue turns on whether the boycott was 'addressed to the labor relations of the contracting employer *vis-a-vis* his own employees,' *National Woodwork* [386 U.S. 612 at 645 (1967)], and is therefore primary conduct, or whether the boycott was 'tactically calculated to satisfy union objectives elsewhere' [id. at 644], in which event the boycott would be prohibited secondary activity." *NLRB v. Pipefitters Local 638 (Enterprise Assn.)*, 429 U.S. 507, 511 (1977).

It is also well settled that a union engaged in primary activity against an employer is entitled to picket "a gate reserved for employees of neutral delivery men furnishing day-to-day service essential to the [employer's] regular operations," *Steelworkers (Carrier Corp.) v. NLRB*, above at 499, without violating Section 8(b)(4)(B). Relying on this rule, as applied in *Oil Workers (Anchortank, Inc.)*, above, the judge herein found that the Respondent was entitled to enmesh Yuasa Trading Corp. in its dispute with ATC and accordingly dismissed that portion of the complaint. In dismissing the 8(b)(4)(B) allegation in reliance on *Anchortank*, above, the judge necessarily and implicitly found that the Respondent's picketing, like the *Anchortank* picketing, was primary activity. Absent such a preliminary finding the Respondent would *not* be entitled to ensnarl Yuasa Trading Corp. in its picketing action. In our view *Carrier Corp.*, above, only protects primary activity.

We hold that, on these facts, the judge erred in finding that the Respondent's picketing against ATC was primary activity. After considering the totality of the circumstances and the legislative intent behind Section 8(b)(4)(B), we find that the Respondent's picketing from 11 January to 22 January 1981 cannot be viewed as primary activity directed at ATC.

It is undisputed that the Respondent was certified by the Board to represent SES's longshoremen. The Respondent was not, however, recognized by the Board to represent any of ATC's employees. Furthermore, the Respondent does not contend that its picketing against ATC was intended to further any recognitional objective. Nor does the Respondent contend that SES is an ally of ATC or that SES has any contractual relationship with ATC. Indeed, SES loaded the ships at the behest of ATC's customers. Lacking any sort[9] of representational, contractual, or other relationship with ATC's employees, we find that the Respondent's picketing was not addressed to ATC's labor relations vis-a-vis its own employees.

As noted above, we have found that the Respondent's picketing violated Section 8(b)(4)(D). That picketing, unlike[10] the actions in *Carrier Corp.* and *Anchortank* was intended to further an illegal jurisdictional purpose. The record further reveals that the Respondent's official Browne offered to bring union members from other parts of Alaska to load ATC's timber. In light of the work assignment[11] objective and the desire to secure employ-

actually loading the timber into the boat. See 16 *Words & Phrases* 446 (perm. ed. 1959).

[8] Under an F.O.B. (free on board) arrangement ATC is obligated to deliver the timber into the boats' holds. See 17 *Words & Phrases* 288 (perm. ed. 1958).

[9] The parties stipulated that the Respondent's picket signs read "Picket Informational/ATC Unfair Substandard/ILWU 62-B." The Respondent does not contend, however, that it engaged in publicity picketing, unfair labor practice picketing, or area wage standards picketing. Although the Respondent does contend that it engaged in work preservation picketing, we have dismissed that defense. See fn. 2.

[10] The union in *Carrier Corp.* picketed pursuant to an economic strike. Although the facts are not completely clear, the picketing in *Anchortank* appeared to be related to recognitional goals or to an unfair labor practice strike.

[11] We emphasize that we are not holding that all jurisdictional strikes necessarily constitute secondary activity. We hold only that the Respondent's utter lack of any legal or contractual relationship with ATC, coupled with the Respondent's objectives elsewhere, compel a finding that the picketing herein was not primary conduct.

ment for union members located elsewhere, we find that the Respondent's action was tactically calculated to satisfy union objectives elsewhere.

In our view the Act does not permit a union to assume that any picketing against any employer will be found to constitute protected primary action under the proviso to Section 8(b)(4)(B). As an abstract proposition we cannot delineate the precise contours of primary action. At best, we apply the *Enterprise Assn.* standard on a case-by-case basis. On these facts we conclude that the Respondent's action was not addressed to the labor relations of ATC vis-a-vis its own employees but rather that the Respondent's picketing was calculated to satisfy union objectives elsewhere. *NLRB v. Pipefitters Local 638 (Enterprise Assn.)*, above. Accordingly, we hold that the Respondent's picketing against ATC was not primary activity within the meaning of the Act. Therefore, the Respondent cannot employ the doctrine of *Carrier Corp.*, above, to shield the picketing's secondary effects as to Yuasa Trading Corp. In conclusion, we find that, by coercing ATC to cease doing business with Yuasa Trading Corp., the Respondent's picketing against ATC violated Section 8(b)(4)(B) of the Act.

CONCLUSIONS OF LAW

1. Alaska Timber Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Yuasa Trading Corp. is a person engaged in commerce within the meaning of Section 2(1) and Section 8(b)(4)(i) and (ii)(B) of the Act.

3. The Respondent, International Longshoremen's and Warehousemen's Union Local 62-B, is a labor organization within the meaning of Section 2(5) of the Act.

4. By picketing the facility and dock of Alaska Timber Corporation with an object of forcing Alaska Timber Corporation to assign work to the Respondent's members, the Respondent has engaged in an unfair labor practice within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

5. By picketing the facility and dock of Alaska Timber Corporation with an object of forcing Alaska Timber Corporation to cease doing business with Yuasa Trading Corp., the Respondent has engaged in an unfair labor practice within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, International Longshoremen's and Warehousemen's Union Local 62-B, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to comply with the Board's Decision and Determination of Dispute and from threatening, coercing, or restraining Alaska Timber Corporation, where an object thereof is to force or require Alaska Timber Corporation to assign the work of loading products for shipment at its docking facility in Klawock, Alaska, to employees represented by the Respondent rather than to employees of Alaska Timber Corporation.

(b) Threatening, coercing, or restraining Alaska Timber Corporation, where an object thereof is to force or require Alaska Timber Corporation to cease doing business with Yuasa Trading Corp.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at the Respondent's business offices, meeting halls, and all other places where notices to members are customarily posted, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director with signed copies of the notice for posting by Alaska Timber Corporation and Yuasa Trading Corp., if willing, in places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[12] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to comply with the Board's Decision and Determination of Dispute and threaten, coerce, or restrain Alaska Timber Corporation, where an object thereof is to force or require Alaska Timber Corporation to assign the work of loading products for shipment at its docking facility in Klawock, Alaska, to employees represented by us rather than to employees of Alaska Timber Corporation.

WE WILL NOT threaten, coerce, or restrain Alaska Timber Corporation, where an object thereof is to force or require Alaska Timber Corporation to cease doing business with Yuasa Trading Corp.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION LOCAL 62-B

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge. On June 18, 1982, the Regional Director for Region 19 issued a consolidated complaint alleging that International Longshore Workers Union, Local 62-B (Respondent) had violated Section 8(b)(4)(i) and (ii)(B) and (D) of the National Labor Relations Act (the Act) by certain picketing activities in January 1981 during a dispute with Alaska Timber Corporation (ATC) over the assignment of ship-loading tasks at ATC's dock in Klawock, Alaska.[1]

On December 9, 1982, the General Counsel, Respondent, and ATC submitted a joint motion to accept stipulation and stipulation of facts stating their agreement to dispense with oral testimony; that the stipulation of facts and certain incorporated exhibits, including the decision and determination of dispute, the transcript of testimony, the exhibits, and the formal papers in the prior proceeding under Section 10(k) of the Act,[2] along with other documents, would "constitute the entire record in the case"; and that they "waive[d] the right to file with the Board exceptions to the findings of fact made by the Administrative Law Judge" in the decision on the merits based upon that record.

On December 17, 1982, pursuant to Section 102.35(i) of the Board's Rules and Regulations and Section 101.10(b)(4) of its Statements of Procedure, I issued an Order Approving Stipulation and Granting Motion. Each of the parties thereafter submitted a brief.[3]

I. JURISDICTION

ATC is an Alaska corporation located in Klawock, where it harvests and processes timber, and sells the resulting lumber. Its annual revenues exceed $500,000, of which over $50,000 derives from the sale and shipment of product directly to customers outside Alaska.

ATC is a person within Sections 2(1) and 8(b)(4)(B) of the Act and an employer within Sections 2(2) and 8(b)(4)(D), engaged in and affecting commerce within Section 2(6) and (7).

II. LABOR ORGANIZATION

Respondent is a labor organization within Section 2(5) of the Act.

III. THE ALLEGED MISCONDUCT

A. *Evidence*

On January 9, 1981, a ship known as the *Eastern Hope*, chartered by an ATC customer, Yuasa Trading Corp., arrived at ATC's Klawock dock to obtain a load of lumber. Loading, performed by ATC mill employees working from 7 a.m. to 6 p.m., began January 11 and was completed January 19, after which the ship departed the dock January 22. The ATC employees are not represented by any labor organization. They were recalled from layoff to load the ship, ATC having shut down its mill the preceding October because of a depressed market.[4]

This was the first time ATC had acted in implementation of a newly established free-on-board (FOB) arrangement, whereby loading was its responsibility. Under the previous arrangement, free alongside (FAS), its customers bore responsibility for loading, generally engaging South East Stevedoring Co. (SES) whose employees are represented by Respondent.[5]

On January 10, the day before loading began, two officials of Respondent, Jay Browne and Larry Cotter, visited ATC's president, Edward Head, at ATC's offices. Aware that ATC intended to load the *Eastern Hope* with its own employees, Browne and Cotter asked Head, per the stipulation of facts, "if there was anything they could

[1] The charges in Cases 19-CD-385 and 19-CC-1319 were filed by ATC May 29, 1981.

[2] The Board's Decision and Determination of Dispute issued May 27, 1982, finding that "reasonable cause exists to believe that Sec. 8(b)(4)(D) . . . has been violated" by Respondent, and concluding that "the unrepresented employees of [ATC] are entitled to perform the work in dispute," rather than employees represented by Respondent. *Longshoremen ILA Local 62-B (Alaska Timber)*, 261 NLRB 1076 at 1077 and 1079 (1982).

[3] Respondent's motion to strike portions of the Charging Party's brief is granted. The subject portions of that brief were not considered in the preparation of this decision.

[4] The mill was shut down for about 6 months. It operates the year around in normal times.

[5] On October 9, 1973, Local 62, the parent local of Respondent, was certified to represent a bargaining unit comprised of SES's longshore employees "at its Klawock, Alaska, stevedoring operation."

do to convince ATC to load the ship . . . with union longshoremen"; and Head resisted, explaining that ATC was using its own employees because a lack of longshoremen in the area had prevented the timely loading of ships in the past.

Head testified in the 10(k) proceeding that, during the same exchange, the union officials asked if ATC would consider hiring members of Respondent directly, bypassing SES; that, responding to his comment about past crew shortages, they "assured" him that Respondent "could bring crews in from other cities," such as Wrangell and Ketchikan, so he "would be able to load [the ship] without local people"; and that they said there would be picketing if ATC adhered to its plan. Head assertedly rejected the idea of bringing in longshoremen from elsewhere on the ground of excessive cost.

Browne, testifying in the same proceeding, initially averred that, while he could recall promising Head "enough men to load two ships," he could not remember saying he "would arrange for longshoremen from other ports to perform Alaska Timber's work." He later testified that he "remember[ed] talking about" bringing in crews from other parts of Alaska, only to qualify:

> I don't think that we said—we didn't say we'd get them from Ketchikan or Wrangell. I could be mistaken, but I was after the people from right there in the community, getting them.

Browne conceded in his 10(k) testimony that he or Cotter raised with Head the possibility of "trouble." Asked what that was in reference to, he testified: "I don't know."

Cotter did not testify in the 10(k) proceeding.

At 7 a.m., January 11, picketers appeared at the two land entrances to the ATC premises, displaying signs saying: "Picket Informational/ATC Unfair Substandard/I.L.W.U. 62-B." The entrances are about 100 feet apart. One is perhaps 425 feet from the dock,[6] and visible from it. The other, more remote, cannot be seen from the dock. Picketing at the two entrances continued daily, generally from 7 a.m. to 6 p.m., until the January 22 departure of the *Eastern Hope*.[7] In addition, from January 18 until the ship's departure, around-the-clock picketing was conducted from a small boat situated on the outboard side of the *Eastern Hope*. The boat, displaying a sign identical to that used by the land picketers, patroled to-and-fro along the ship's 500-foot length during the day, anchoring in that area at night.

From completion of the loading process until the ship's departure, the only ATC personnel on the premises were the normal office staff and a security patrol.

On January 20 and again on January 21, encountering picketers at one of the land entrances, the pilot assigned to steer the *Eastern Hope* out of the harbor refused to enter the premises and thus was unable to board the ship. He had been engaged by SES, acting as agent for the ship. On January 22, ATC having cut the ship adrift, the pilot entered, despite the picketers, and was taken by tugboat to the ship whereupon he boarded and did his duty. The picketers withdrew more or less coincident with his going aboard. The tugboat, operated by Seakist Towing, was procured by SES at the instance of the *Eastern Hope*.

Respondent did not inquire of ATC before the onset of picketing how the wage and benefit levels paid its employees for loading the ship compared with union levels. In fact, ATC's minimum wage was slightly greater than the minimum under Respondent's bargaining agreement. The record is inconclusive concerning relative benefit levels.

In its Decision and Determination of Dispute, having concluded that ATC employees are entitled to perform the work in question, the Board ordered Respondent, within 10 days from its date, to

> . . . notify the Regional Director for Region 19, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.[8]

Respondent failed to provide such notification.

B. *Conclusions*

Section 8(b)(4)(D). Respondent having failed to notify the Regional Director of its intentions with regard to the work in question as ordered by the Board in its Decision and Determination of Dispute, it is appropriate that the alleged violation of Section 8(b)(4)(i) and (ii)(D) be considered on the merits.[9]

In finding "reasonable cause" to exist that Respondent's picketing violated Section 8(b)(4)(D), the Board relied on Head's testimony in the 10(k) proceeding that the union officials suggested in advance of the picketing that ATC hire union members directly, bypassing SES, and that they offered to bring in crews from other cities to enable loading "without local people." This, the Board reasoned, satisfied the reasonable-cause standard that an object of the picketing "was to force or require the assignment of the disputed work to employees represented by" Respondent, overcoming Respondent's contention that it had the valid work-preservation objective of merely compelling ATC to return to its previous mode of operation.[10]

It is concluded that Head's testimony, beyond meeting the reasonable-cause standard applicable to 10(k) matters, was of a believability satisfying the preponderance-of-evidence burden that obtains in this proceeding on the merits.[11] Not only was it rendered cleanly and without

[6] Judging from a scale map in evidence.

[7] Picketing at the entrances went on through the night of January 21-22.

[8] 261 NLRB at 1079.

[9] E.g., *Iron Workers Local 568 (Dickerson Concrete)*, 204 NLRB 59, 60 (1973).

[10] 261 NLRB at 1077.

[11] Regarding the differing standards of proof as between a 10(k) proceeding and a trial on the merits, see, e.g., *ITT Corp. v. Electrical Workers Local 134*, 419 U.S. 428, 445-446 (1974), and *NLRB v. Plasterers Local 79*, 404 U.S. 116, 122 fn. 10 (1971).

equivocation, as shown by the 10(k) transcript, but that same transcript contains no denial by Respondent's Browne that he suggested ATC's hiring around SES, and it reveals Browne's acknowledgement that, in promising Head "enough men to load two ships," he "remember[ed] talking about" bringing in crews from other parts of Alaska. Given this state of the 10(k) transcript, and the weak and equivocal character of Browne's purported denials of certain remarks attributed to him by Head as further reflected therein, ample bases exist for crediting Head without need to observe the two witnesses' testimonial demeanor.

Therefore, the picketing, having been revealed for an object proscribed by Section 8(b)(4)(i) and (ii)(D), was in violation of that section.

Section 8(b)(4)(B). The General Counsel, citing *Moore Dry Dock*[12] and certain of its offspring, contends that continuation of the picketing after completion of the loading was "at times other than those when the primary [ATC] was engaged in its normal business," warranting the inference that such picketing was for a secondary object, violating Section 8(b)(4)(i) and (ii)(B). The General Counsel also contends that the waterborne picketing, from its inception, occurring on that side of the *Eastern Hope* away from the loading activities, was "directed at those employees [of] the vessel" rather than employees of ATC, again revealing a secondary object in violation of Section 8(b)(4)(i) and (ii)(B). The Charging Party argues in much the same vein.

In *Moore Dry Dock*, the Board set forth standards to be applied in common-situs picketing situations to determine whether picketing is for a primary rather than secondary object—that it be "strictly limited to times when the *situs* of the dispute is located on the secondary employer's premises," that the primary employer be engaged "in its normal business at the *situs*" during the picketing, that the picketing "be limited to places reasonably close to the location of the *situs*," and that the picketing "discloses clearly that the dispute is with the primary employer."[13] The Board since has extended these standards to instances in which "the picketed premises are owned by the primary employer."[14]

Respondent, on the other hand, grounds its no-violation argument on *Oil Workers (Anchortank)*,[15] which it characterizes as "strikingly similar" to the present case as concerns the 8(b)(4)(B) issue.

In that case, the primary employer, Anchortank, operated a petrochemical storage facility. The stored substances, title to which never passed to Anchortank, were delivered to and from the facility by ship, using a dock adjacent to the Anchortank premises. The ships were neither owned nor operated by Anchortank, and the dock was leased to it, for its exclusive use, when there was loading or unloading to be done.[16] Pilots licensed by the state and procured by agents for the shipping companies steered the ships between open water and the dock.

The respondent union, in furtherance of its dispute with Anchortank, picketed at the main land entrance to the premises, and, when a ship was at the dock, also picketed at the ramp leading to the dock and from a small motorized boat which patroled alongside the ship.

The administrative law judge, relying on two Supreme Court decisions, *Steelworkers v. NLRB*,[17] and *Electrical Workers Local 761 v. NLRB*,[18] determined that this was not a common-situs situation with regard to the activities of Anchortank, the ships, and the pilots inasmuch as all "contributed, in the language of the *General Electric* case, 'to operations which the strike [against Anchortank] is endeavoring to halt.'"[19] There being no common situs, the administrative law judge concluded that the *Moore Dry Dock* standards were inapplicable and that there otherwise was insufficient basis to infer a secondary object.[20] The Board adopted the administrative law judge's reasoning without modifying comment, and its decision later was affirmed by a court of appeals.[21]

It is concluded, in agreement with Respondent, that *Anchortank* is not significantly distinguishable from the present case regarding the 8(b)(4)(B) issue, and that Respondent consequently did not violate that section as alleged.[22]

CONCLUSIONS OF LAW

Respondent's picketing activities as described herein violated Section 8(b)(4)(i) and (ii)(D) of the Act, but did not violate Section 8(b)(4)(B).

[Recommended Order omitted from publication.]

[12] *Sailors Union (Moore Dry Dock)*, 92 NLRB 547 (1950).

[13] Id. at 549.

[14] *Retail Clerks Local 1017 (Crystal Palace)*, 116 NLRB 856, 859 (1956).

[15] 238 NLRB 290 (1978).

[16] Other lessees also used the dock from time to time.

[17] 376 U.S. 492 (1964).

[18] 366 U.S. 667 (1961).

[19] 238 NLRB at 293.

[20] Ibid.

[21] *Anchortank, Inc. v. NLRB*, 601 F.2d 233 (5th Cir. 1979). The court, rejecting Anchortank's common-situs argument, observed: "[T]o be a common situs the area must not be the primary situs of the struck employer *and* neutral employers must be present at the time of the picketing." 601 F.2d at 238.

[22] That the dock in *Anchortank* was not owned by Anchortank, and that it never had title to the product with which it dealt, whereas the opposite is so in the present case, are not seen as distinctions requiring different results.